



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3149-99

17 September 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 September 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 29 February 1972 for four years at age 20. The record reflects that you served for only five months without incident. During the month of July 1972 you received two nonjudicial punishments (NJP) for two periods of unauthorized absence (UA) totalling about seven days and breaking restraint from correctional custody.

The record further reflects that you were reported UA on 11 August 1972 and remained absent until you were apprehended by civil authorities on 9 July 1973.

On 1 August 1973 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing 332 day period of UA. A medical examination on 31 August 1973 showed that while you were UA you suffered some broken ribs and punctured your right lung, for which you underwent surgery.

On 13 September 1973 the commanding officer (CO) recommended that your request be approved. In his recommendation, he stated that your UA was because of family problems you could not solve. He noted that you claimed that when you could not get any assistance from your first sergeant you went UA. While in a UA status you

lost part of your lung and suffered other serious injuries in an accident which prevented you from performing full duties. However, the discharge authority disapproved your request for discharge on 20 September 1973.

On 28 September 1973 you received NJP for a two day period of UA. On 5 October 1973, you submitted a letter for consideration stating that you did not know the position you were placing your family in when you enlisted. In July 1972, your father became disabled and was incapable of supporting his family. You further stated that in July 1972 you asked for a hardship discharge but were denied consideration by the first sergeant. You went UA and got a job to support your family and worked for about two months when you broke some ribs and punctured your right lung. You returned to work after three weeks and a week later were admitted to the hospital with a collapsed lung. You also state that after you recovered somewhat, you got married and your wife became pregnant soon thereafter. You asserted that you were planning to return to the Marine Corps, but due to the family hardship and your wife's condition, you decided to wait until the baby was born. However, civilian authorities took you into custody. In view of the foregoing, you believed that you had grounds for a hardship discharge and requested consideration for such a separation.

On 20 October 1973 you were reported UA again and remained absent until you surrendered to military authorities. On 26 November 1973 you submitted a second request for an undesirable discharge for the good of the service to escape trial by court-martial for the two foregoing periods of UA, which now totalled 353 days.

The commanding officer (CO) recommended approval of your request. In his recommendation, the CO noted that since July 1973, your case had received continuing attention from him and the previous company commander. He stated that you were a well oriented individual who was conscious of the obligations to your country and family, and that you had a deep desire to place the welfare of your family above all else. You were the only source of support of an incapacitated father and mother, who were burdened with raising several young children, and a wife and baby. You were convinced of your inability to serve due to your pressing emotional problems and physical limitations, and could not bear the reality of undue personal hardship your family would suffer in the event of confinement. Since you could not hope to earn enough money as a Marine to discharge the numerous family debts and provide adequate support for your family, the CO believed that consideration of an undesirable discharge would be the most merciful solution for your family, and in the best interest of the military and you. The discharge authority approved your request and you were discharged under other than honorable conditions on 13 December 1973.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education, the family problems which led to your prolonged period of UA, and the fact that it has been nearly 26 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of three NJPs and the fact that you requested discharge rather than face trial by court-martial for two periods of UA totalling nearly a year. The Board noted that your first request for discharge was disapproved by the discharge authority. It appeared to the Board that due to extenuating circumstances in your case, you might not have received a punitive discharge had you gone to trial, and you could have earned a discharge under honorable conditions. While you may have been eligible for a hardship discharge, processing was not appropriate until all disciplinary action was resolved. Disciplinary action could not be resolved since you elected discharge. The Board is always sympathetic to individuals with serious family problems, however, the Board was not convinced that your family problems were so severe as to warrant absences of nearly a year. The Board also noted the aggravating that the prolonged period of absence was terminated only by your apprehension. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director